



0000102420

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

IN THE MATTER OF THE APPLICATION OF
ARIZONA ELECTRIC POWER COOPERATIVE,
INC. FOR A RATE INCREASE.

Docket No. E-01773A-04-0528

IN THE MATTER OF THE APPLICATION OF
SOUTHWEST TRANSMISSION COOPERATIVE,
INC. FOR A RATE INCREASE.

Docket No. E-04100A-04-0527

**RESPONSE AND OPPOSITION
TO MEC'S MOTION TO AMEND
PRIOR RATE DECISIONS AND
ORDER TO DELAY AEPCO'S
AND SWTC'S RATE FILINGS
AND CROSS-MOTION**

INTRODUCTION

The Arizona Electric Power Cooperative, Inc. ("AEPCO") and Southwest Transmission Cooperative, Inc. ("SWTC") submit this Opposition/Cross-Motion to the Motion filed by Mohave Electric Cooperative, Inc. ("MEC") on September 21, 2009. MEC requests that the Commission prohibit AEPCO and SWTC from filing rate cases until 2010 (the "Motion to Prohibit" or "MEC's Motion").¹

If granted, the prohibition to file would substantially prejudice both AEPCO and SWTC and greatly increase the costs associated with the filings. Specifically, AEPCO requires rate relief to address, among other issues, the recent increases in coal costs, the impacts of expirations of large purchased power and sales contracts as well as the effects of costly mercury control requirements that commence on January 1, 2011. SWTC is also being significantly affected by the expiration of these sales contracts as well as the loss of other point-to-point revenues. Any

¹ Any of the relief options requested by MEC at page 7 of its Motion to Prohibit, as a practical matter, would bar a revised or initial filing until well into 2010.

GALLAGHER & KENNEDY, P.A.
2575 E. CAMELBACK ROAD
PHOENIX, ARIZONA 85016-9225
(602) 530-8000

1 concerns raised by MEC can and should be addressed in the rate cases themselves, not cited as
2 reasons to prohibit filing for the timely rate relief which is needed by AEPCO and SWTC.

3 **ARGUMENT**

4 **A. AEPCO and SWTC Are Constitutionally Entitled to File for Rate Relief.**

5 While styled as a Motion to Delay filings, in fact, MEC's Motion seeks an order from the
6 Commission prohibiting AEPCO and SWTC from requesting rate relief for up to nine months,
7 *i.e.*, July 1, 2010. While the Commission certainly has the ability to order a utility to file a rate
8 case by a date certain—as it has done here—no authority supports MEC's request that the
9 Commission prohibit a filing.

10 To the contrary, MEC's request violates AEPCO's and SWTC's right to seek rate
11 relief—a right that is guaranteed and protected by both the Arizona and United States
12 Constitutions. *See Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 149, 294 P.2d 378,
13 380-381 (1956) (acknowledging that a utility's right to fair and reasonable rate-setting is
14 protected by the due process and equal protection clause of the Fourteenth Amendment).
15 Accordingly, MEC's Motion should be denied as an attempt to violate AEPCO's and SWTC's
16 constitutional right to seek rate relief and/or dismissed for failure to state a claim upon which
17 relief can be granted. Ariz. R. Civ. P., Rule 12(b)(6).

18 **B. AEPCO and SWTC Need Rate Relief.**

19 Another critical flaw in MEC's Motion is the implication that the only reason AEPCO
20 and SWTC are filing the rate cases is to comply with Commission deadlines.² The reality—of
21 which MEC is well aware in light of its representation on the Boards of both cooperatives—is

22 _____
23 ² At best, MEC's incorrect posit on this issue is only applicable to AEPCO. Only AEPCO was under a Commission
24 order to file its rate case by October 1, 2009. The Commission deadline for SWTC's next rate filing is August 2010.
(Decision No. 68072, Second Ordering Paragraph, p. 11.) However, for the reasons set forth herein, SWTC is also
submitting a rate application shortly because it, too, needs rate relief.

1 that AEPCO and SWTC need to file as a result of significant cost increases and contract
2 expirations which are having major cost and revenue impacts on both cooperatives.

3 Specifically, as Dirk Minson, AEPCO's CFO, explains in his direct testimony, the need
4 for rate relief is primarily driven by four changes. (Minson Direct, p. 7, l. 15 through p. 8, l. 14.)
5 First, on December 31, 2008, AEPCO's 15 MW sales agreement with the City of Mesa ("Mesa")
6 and 13 MW purchased power agreement with Public Service Company of New Mexico ("PNM")
7 expired. Also, AEPCO's 100 MW, 20-year sales contract with Salt River Project ("SRP") will
8 expire on December 31, 2010. The Mesa, PNM and SRP long-term contract expirations are very
9 major events on the AEPCO system. They carry substantial cost as well as revenue
10 consequences. Second, AEPCO's long-term coal arrangements expired at the end of 2008 and
11 the new coal contracts in effect as of January 1, 2009 result in significantly higher delivered coal
12 prices. Third, the overhaul and maintenance costs associated with AEPCO's generating assets
13 continue to increase with the age of the equipment. Finally, beginning January 2011, AEPCO
14 incurs substantial new costs associated with mercury control in compliance with an ADEQ
15 Consent Order. These and other adjustments to the test year drive AEPCO's net margins down
16 by more than \$15 million.

17 As to SWTC, the expiration of AEPCO's long-term sales contracts with SRP and Mesa
18 has a major effect on the transmission cooperative's point-to-point revenues. As Mr. Minson
19 will explain in his testimony in support of SWTC's filing, AEPCO has been paying substantial
20 sums to SWTC to transmit the energy sold under these contracts. That revenue stream has
21 expired or will expire with the Mesa and SRP contracts. Additionally, two more of SWTC's
22 point-to-point customers—Western Area Lower Colorado and Morenci Water and Electric—are
23 also terminating transmission service. The loss of these point-to-point and other revenues totals
24 \$8.6 million in annual revenues for SWTC. To put that in context, that translates to a 24% drop

1 in SWTC's annual revenues and, along with other adjustments, a \$9.5 million drop in test year
2 net margins.

3 Thus, while only AEPCO's rate case filing on October 1 was necessary to comply with
4 the Commission's decision, the real reason behind both applications is both cooperatives' need
5 for timely rate relief.

6 **C. Unresolved Rate Design Concerns Should Be Addressed in the AEPCO Rate Case.**

7 MEC's primary rationale for trying to prohibit the filing of AEPCO's rate case is to
8 provide additional time for AEPCO's members to agree on a revised rate design and allocation
9 of costs between all-requirements and partial-requirements members. MEC maintains that
10 revised partial-requirements member agreements ("PRM Contracts") must be agreed upon by
11 members and then prepared and approved by both the Rural Utility Service ("RUS") and the
12 Commission before either AEPCO or SWTC can file for rate relief. That position is untenable in
13 several respects.

14 First, MEC characterizes the inclusion of the revised rate design into AEPCO's rate
15 application as somehow unauthorized and inconsistent with the intent of AEPCO's members. In
16 truth, the revised rate design reflected in the filing (multiple energy rates and a fixed O&M PRM
17 monthly charge) is what the members, including MEC, have agreed upon. Its inclusion in
18 AEPCO's filing was expressly authorized by the AEPCO Board of Directors. (Minson Direct,
19 p. 4, l. 22 through p. 5, l. 22.)

20 As AEPCO and MEC informed the Commission earlier this year, the members of
21 AEPCO have been discussing revisions to the rate design for quite some time. (Letter from
22 Michael A. Curtis, dated May 7, 2009, attached hereto as Exhibit 1.) The purpose of those
23 discussions was specifically to develop a rate design to be incorporated into AEPCO's 2009 rate
24 application that would allocate costs in a different manner than the allocation method contained

1 in the existing PRM Contracts. Accordingly, in July, the AEPCO Board of Directors authorized
2 AEPCO staff to incorporate the agreed-upon rate design concepts into its application. (AEPCO
3 Board Resolution, dated July 14, 2009, attached as Exhibit 2 hereto.)

4 MEC's Motion and Supplement acknowledge that significant progress has been made in
5 rate committee meetings and that the AEPCO members, including MEC, have reached
6 agreement on many core issues.³ Consistent with that progress and the Board's July 2009
7 Resolution, the AEPCO Board authorized the filing of the October 1, 2009 application. (AEPCO
8 Board Resolution, dated September 15, 2009, attached as Exhibit A to MEC's Supplemental
9 filing on September 22, 2009.) Thus, while the rate design in AEPCO's application differs from
10 the existing PRM Contracts, it adheres to its members' agreements and the Board's directives.
11 MEC's claim that AEPCO is required to file its rate request based on the existing PRM Contracts
12 is completely contrary to the members' efforts to revise cost allocation principles as well as the
13 Board's July and September Resolutions.

14 Next, MEC argues that AEPCO is prohibited from including the revised rate design in its
15 application without first receiving RUS and then Commission approval of the revisions. That's
16 simply wrong as a matter of legal requirement and past practice. There is no requirement in any
17 contract or Commission regulation that AEPCO formally amend the PRM Contracts and obtain
18 RUS and Commission approval prior to filing its rate case. As to sequencing, as MEC knows,
19 the parties processed MEC's original PRM contract through the Commission and RUS
20 simultaneously and actually received Commission approval of the agreement before RUS
21 approval was secured. AEPCO did not—as MEC now suggests it must—first process through
22 and secure approval from the RUS.

23 _____
24 ³ Motion to Prohibit, p. 5, ll. 6-8; MEC's Supplemental Filing, dated September 22, 2009, p. 2, ll. 4-6.

1 Moreover, MEC's proposed sequence is impractical—it does not make sense formally to
2 amend the PRM Contracts and obtain RUS approval based on a new rate design approach
3 without first seeking feedback from the regulator most involved on that issue, *i.e.*, this
4 Commission. Further, there is no authority that an ACC-approved contract affecting rates first
5 be amended prior to filing a rate case involving it. In fact, decisions issued by both the
6 Commission and Arizona courts support the notion that a rate case is an appropriate forum to
7 address contract amendments.⁴

8 Accordingly, in the event that AEPCO's members are unable to resolve remaining details
9 (which may or may not involve a revised rate design in any event) by December 1, 2009, the
10 Board's September Resolution expressly anticipates that its members, including MEC, will
11 exercise their right to intervene in the rate case and advocate their respective positions.
12 Amendments to AEPCO's rate filing may or may not be needed. Intervention in the AEPCO
13 rate case is the appropriate way to address any lingering disputes, especially in light of AEPCO's
14 separate need for rate relief.⁵

15 **D. MEC's PRM Contract Concerns Are Unrelated to SWTC's Rate Application.**

16 As indicated above, the rate design concerns raised in MEC's Motion relate only to
17 AEPCO's filing. While MEC misleadingly includes SWTC in its Motion, the revisions to
18 MEC's PRM contract with AEPCO for generation service currently agreed upon or being
19

20 ⁴ See *In re Tucson Electric Power Co.*, Decision No. 69568, dated May 21, 2007 (consolidating motion to amend
21 settlement agreement regarding rates with utility's rate case). See also *General Cable Corp. v. Citizens Util. Co.*, 27
22 Ariz. App. 381, 386, 555 P.2d 350, 355 (1976) (implying that the Commission had jurisdiction to consider the rates
under an electricity supply contract); *General Cable Corp. v. Citizens Util. Co.*, 27 Ariz. App. 386, 555 P.2d 355
(1976) (related case in which the buyer under the electricity supply contract intervened in the utility's rate case to
request that the Commission approve a lower rate); *Maricopa Util. Co. v. Cline*, 60 Ariz. 209, 134 P.2d 156 (1943)
(rates approved by Commission superseded contract rates).

23 ⁵ Both AEPCO and SWTC are requesting rate relief effective January 1, 2011. This allows more time for
24 processing. Fifteen months should be more than sufficient time for the parties to discuss and the Commission to
address rate case issues.

1 discussed by the members would not require any amendments to MEC's separate transmission
2 agreement with SWTC. Illustrative of that fact: in contrast to the September AEPCO Board
3 Resolution, the Resolution approved by the SWTC Board of Directors authorized filing its rate
4 application without any reference to rate design issues. (SWTC Board Resolution, dated
5 September 16, 2009, attached as Exhibit 3 hereto.) Simply stated, SWTC's rate filing here will
6 present the same rate design considered and approved by the Commission in 2005. There simply
7 is no reason or basis to postpone SWTC's rate application, which will be submitted shortly.

8 **E. MEC's 2008/2009 Test Year Complaint Is Unsound.**

9 MEC's Motion also claims that the test year ending March 31, 2009 is not a
10 representative test year and asserts, for that additional reason, that the AEPCO and SWTC rate
11 case filings should be prohibited. As a preliminary matter, in suggesting instead that the
12 cooperatives file based on a test year ending December 31, 2009, MEC directly contradicts the
13 statements it made to the Commission just five months ago in which it endorsed the March 31
14 test year and "strenuously" rejected the notion of a calendar 2009 test year:

15 Mohave believes that the proposal of a test year ending March 31,
16 2009, with an October 1, 2009 filing date for its Rate Application
17 is reasonable and a purposeful compromise of the competing
18 concerns and, therefore, Mohave supports the revised proposal.
19 This means that the entire membership of AEPCO is supportive of
20 the revised proposal.

21 Given the current circumstances, Mohave would object strenuously
22 to Staff's recommendation that AEPCO could file its Rate
23 Application on March 31, 2010, using a December 31, 2009 test
24 year.

(Exhibit 1 (emphasis added).)

22 Moreover, there is no support for MEC's claim that the statewide and nationwide
23 economic conditions impacting the test year (spanning April 1, 2008 through March 31, 2009)
24 have not likewise impacted the 2009 calendar year. Rather, Arizona utilities and its economy are

1 still feeling the “brunt of the economic collapse.” Both will experience the effects for the next
2 few years, making the 2008/2009 test year representative.

3 **F. MEC’s Commission Resources and No Adverse Impact Arguments Are Not Well**
4 **Founded.**

5 Finally, AEPCO and SWTC are also sensitive to the fact that Commission resources are
6 strained by the current budget impact. As noted, however, by filing in October 2009 and not
7 asking for relief until January 1, 2011, both cooperatives have allowed more time than normal to
8 process their cases. As for a contentious proceeding, that presumes the remaining, fairly limited
9 issues being discussed by the members will not be satisfactorily resolved. In any event, the
10 contentiousness, or lack thereof, of the proceeding is very much within MEC’s control.

11 As to the no “adverse impact” issue, we have already discussed the adverse impacts to
12 AEPCO and SWTC from prohibiting the filings, because rate relief is required for both.
13 Additionally, the several months of time, great effort and substantial expense “sunk” into the
14 development of and adjustments to the March 31, 2009 test year (which was actively supported
15 by MEC), its schedules and the testimony would be wasted and all of it required to be expended
16 again. Contrary to MEC’s assertions, SWTC and AEPCO would be substantially prejudiced if
17 the Motion to Prohibit were granted.

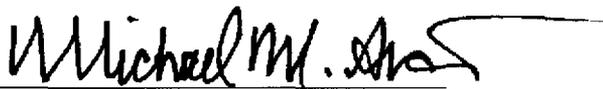
18 **CONCLUSION**

19 AEPCO and SWTC request that MEC’s Motion to Prohibit be denied and/or their cross-
20 motion to dismiss be granted and the cooperatives’ rate applications be promptly processed.
21 Both AEPCO and SWTC need rate relief. MEC’s issues can, if necessary, be addressed in the
22 normal processing of the rate cases.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

DATED this 9th day of October, 2009.

GALLAGHER & KENNEDY, P.A.

By 

Michael M. Grant
Jennifer A. Ratcliff
2575 East Camelback Road
Phoenix, Arizona 85016-9225
Attorneys for AEPCO and SWTC

Original and fifteen copies filed
this 9th day of October, 2009, with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Copies of the foregoing mailed
this 9th day of October, 2009, to:

Michael A. Curtis
Curtis, Goodwin, Sullivan, Udall
& Schwab, P.L.C.
501 East Thomas Road
Phoenix, Arizona 85012-3205
Attorneys for Mohave Electric Cooperative, Inc.

Bradley S. Carroll
Snell & Wilmer, L.L.P.
One Arizona Center
400 East Van Buren
Phoenix, Arizona 85004-2202
Attorneys for Sulphur Springs Valley
Electric Cooperative, Inc.

1 Russell E. Jones
Waterfall, Economidis, Caldwell,
2 Hanshaw & Villamana, P.C.
5210 East Williams Circle, Suite 800
3 Tucson, Arizona 85711-7497
Attorneys for Trico Electric Cooperative, Inc.

4 Michael W. Patten
5 Roshka DeWulf & Patten, PLC
400 East Van Buren, Suite 800
6 Phoenix, Arizona 85004-2262
Attorneys for Trico Electric Cooperative, Inc.

7 John T. Leonetti
8 HC 70, Box 4003
9 Sahuarita, Arizona 85629

10 
10421-59/2209981v3

11
12
13
14
15
16
17
18
19
20
21
22
23
24

EXHIBIT 1

ORIGINAL

The Law Offices of
**CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, P.L.C.**

501 East Thomas Road
Phoenix, Arizona 85012
(www.cgsuslaw.com)
Telephone (602) 393-1700
Facsimile (602) 393-1703

RECEIVED

2009 MAY -7 P 3:14

67

Michael A. Curtis
Susan D. Goodwin
Kelly Y. Schwab
Phyllis L.N. Smiley
Ian D. Quinn

William P. Sullivan
Larry K. Udall
Anja K. Wendel
Michelle Swann

Of Counsel
Joseph F. Abate
Thomas A. Hine

REFER TO FILE NO. 1234
1234 Drop
1234-7-58
1234-21-2-1-10

Arizona Corporation Commission
DOCKETED

May 7, 2009

MAY - 7 2009

HAND DELIVERED

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

DOCKETED BY 

Re: Mohave Electric Cooperative, Inc. Comments Concerning Arizona Electric Power Cooperative, Inc.'s Request to Postpone Filing Date For Its 2009 Rate Case (Docket Nos. E-01773A-04-0528 and E-04100A-0527, Decision No. 68071)

-04-

To Whom It May Concern:

Mohave Electric Cooperative, Inc. ("Mohave") has reviewed the Arizona Electric Power Cooperative, Inc.'s ("AEPCO") April 13, 2009, *Request to Extend the Filing Date of Its' 2009 Rate Case to No Later Than October 1, 2009*, (the "AEPCO Request") and Staff's April 27, 2009, *Memorandum* in response thereto. Mohave has also reviewed the AEPCO May 4, 2009, *Revised Proposal in Relation to the Filing Date for Its 2009 Rate Case Filing*, ("Revised Proposal"). Mohave, through its General Counsel undersigned, for the consideration by the Arizona Corporation Commission comments as follows:

Mohave accounts for 35.8% of the ownership entitlement to AEPCO and, together with the Sulphur Springs Valley Electric Cooperative, Inc. ("SSVEC"), accounts for more than 60% of the AEPCO load. Mohave will be significantly impacted by the next AEPCO rate case filing.

Mohave agrees this rate case will consider new and unique cost allocation challenges in light of the revised AEPCO load and membership composition. Mohave and the AEPCO members and SSVEC have been meeting for an extended period of time in an attempt to resolve revenue, cost, and rate allocation issues that will be integral aspects of the AEPCO Rate Application. Efforts

continue to be made among the AEPCO members to reach consensus on one or more of the issues in advance of the AEPCO Rate Filing. If successful, it will help narrow the issues for the Rate Case and result in a more streamlined and productive process.

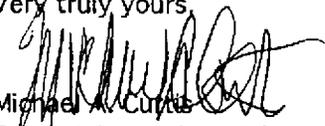
Given the unanimity of AEPCO members in support of delaying the AEPCO Rate Case for an additional sixty (60) to ninety (90) days, Mohave does not oppose the AEPCO request to delay the Rate Case.

Mohave disagrees with the Staff concern that such a delay will result in a "stale" test year since taken in context and under the circumstances, the only reason AEPCO is filing its Rate Application at this time is due to the requirements set forth in the last AEPCO Rate Case Decision requiring a rate filing after SSVEC became a Partial Requirements Member ("PRM"). Mohave agrees with SSVEC that one of the purposes of the test year in the instant case is for AEPCO to have at least a full calendar year of SSVEC being a PRM before the filing (Mohave having been the only prior PRM). Mohave agrees that updating the test year to June 30, 2009 will not provide AEPCO sufficient time to prepare and file a Rate Application by October 1, 2009. Mohave believes, and supports SSVEC and AEPCO and its members, in the position that the use of a 2008 test year would still be appropriate as long as the delay is no more than ninety (90) days.

Mohave believes that the proposal of a test year ending March 31, 2009, with an October 1, 2009 filing date for its Rate Application is reasonable and a purposeful compromise of the competing concerns and, therefore, Mohave supports the revised proposal. This means that the entire membership of AEPCO is supportive of the revised proposal.

Given the current circumstances, Mohave would object strenuously to Staff's recommendation that AEPCO could file its Rate Application on March 31, 2010, using a December 31, 2009 test year. Such would be unfair to the Mohave members.

Very truly yours,

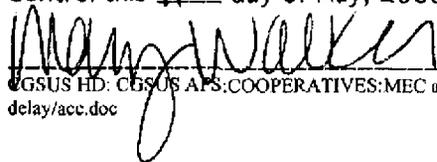

Michael A. Curtis
General Counsel to Mohave Electric
Cooperative, Inc.

MAC/mle

cc: Ernest Johnson, Director of Utilities (Hand Delivered)
Kim Battista, Utilities Division (Hand Delivered)
Janice Alward, Legal Division (Hand Delivered)
Jane L. Rodda, Administrative Law Judge (Mailed and Emailed)
Bradley S. Carroll, Esq. (Mailed and Emailed)
John T. Leonetti, Intervenor (Mailed)
Michael Grant, Esq. (Mailed and Emailed)
Mr. Robert E. Broz, CEO, MEC w/Enclosure

Docket Control
Arizona Corporation Commission
May 7, 2009
Page 3

Original and 15 copies filed with Docket
Control this 7th day of May, 2009:



CGSUS HD: CGSUS APS: COOPERATIVES: MEC and Affiliates: MOHAVE Electric: AEPCO 2009 RATE FILING: Letters: 050609 sppt rate case
delay/acc.doc

EXHIBIT 2

ARIZONA ELECTRIC POWER COOPERATIVE, INC.

The following resolution was adopted at an **executive session** of the Board of Directors of Arizona Electric Power Cooperative, Inc. (AEPSCO), held in Benson, Arizona on July 14, 2009.

RESOLUTION

***WHEREAS**, over the course of the several years since the July, 2004 filing with the Arizona Corporation Commission (ACC) in Docket No. E-01773A-04-0528 of its last rate case, Arizona Electric Power Cooperative, Inc. (AEPSCO) and its Class A members have been discussing the potential resolution of various issues concerning the allocations in that rate case of certain AEPSCO costs between the All Requirements members and Partial Requirements members of AEPSCO (Rate Allocation Issues); and*

***WHEREAS**, AEPSCO by order of the ACC must file a new 2009 rate case by October 1, 2009 (AEPSCO 2009 Rate Filing), which rate filing will necessarily address the Rate Allocation Issues, among other matters; and*

***WHEREAS**, at the direction of the AEPSCO Board of Directors, AEPSCO management has caused to be prepared a document entitled **Principles for Guiding Development of 2009 AEPSCO Rate Filing and Resolution of Rate Allocation Issues** (AEPSCO Rate Filing Guide), which contains AEPSCO staff's proposed timeline and methods for developing the AEPSCO 2009 Rate Filing, including principles for resolution of the Rate Allocation Issues; and*

***WHEREAS**, at the direction of the AEPSCO Board of Directors, AEPSCO management has caused the AEPSCO Rate Filing Guide to be shared with the management and consultants of the Class A members for review and comment, which process has resulted in the most recent version of the AEPSCO Rate Filing Guide dated July 14, 2009; and*

***WHEREAS**, the AEPSCO Board of Directors has been advised that the AEPSCO Rate Filing Guide dated July 14, 2009, resolves many concerns of AEPSCO's Class A members with respect to the AEPSCO 2009 Rate Filing, but may not present in sufficient detail the entire body of all cost and rate formulations of concern to AEPSCO's Class A members that will be required for completing the AEPSCO 2009 Rate Filing; and*

***WHEREAS**, the AEPSCO Rate Filing Guide further provides for the continued sharing with the Class A members of AEPSCO cost and rate information as AEPSCO continues to formulate and finalize the AEPSCO 2009 Rate Filing; and*

***WHEREAS**, the Rate Filing Guide further contemplates the formulation of a Rate Issues Settlement Agreement among AEPSCO and its Class A members that would be filed with the ACC in conjunction with or after the AEPSCO 2009 Rate Filing, which agreement would provide for the concurrence of the Class A members with the details of all rate allocation issues in the AEPSCO 2009 Rate Filing.*

NOW, THEREFORE BE IT RESOLVED, that the Board of Directors of Arizona Electric Power Cooperative, Inc. directs AEPCO Management and Staff to timely prepare the AEPCO 2009 Rate Filing for subsequent approval by the Board of Directors for filing with the ACC and that such filing shall utilize the applicable provisions of the latest amendment of the Rate Filing Guide.

I, Thomas N. Powers, do hereby certify that I am Secretary of AEPCO, and that the foregoing is a true and correct copy of the Resolution adopted by the Board of Directors at an **executive session** held on July 14, 2009.



Secretary

(seal)

EXHIBIT 3

SOUTHWEST TRANSMISSION COOPERATIVE, INC.

The following resolution was adopted at a **regular meeting** of the Board of Directors of Southwest Transmission Cooperative, Inc. (SWTC), held in Safford, Arizona on September 16, 2009.

RESOLUTION

***WHEREAS**, the Arizona Corporation Commission (ACC) issued its Decision Order No. 68072 on August 19, 2005, requiring Southwest Transmission Cooperative, Inc., (SWTC) to file a rate application no later than five years after the effective date of the above referenced decision; and*

***WHEREAS**, Arizona Electric Power Cooperative, Inc., (AEPCO) has a 100 MW capacity contract with the Salt River Project (SRP) that terminates on December 31, 2010; and*

***WHEREAS**, SWTC provides transmission service to AEPCO to deliver the SRP 100 MW capacity contract; and*

***WHEREAS**, the termination of the SRP contract and its associated transmission service revenue from AEPCO will result in a significant SWTC revenue shortfall the Board of Directors authorized the filing of a rate application with the ACC; and*

***WHEREAS**, Management of SWTC caused to be prepared, for the test year of April 1, 2008, through March 31, 2009, certain revenue requirement and rate design schedules which have been reviewed with the Directors of SWTC and reflect an overall increase in SWTC's annual operating revenue requirement of \$8,078,436 which is subject to final Resolution of certain wage, salary and retirement expense issues and which represents a 29.08 percent increase in the test year operating revenue requirement;*

***NOW, THEREFORE BE IT RESOLVED**, that the Board of Directors of Southwest Transmission Cooperative, Inc., hereby authorizes Management to file the rate application on or before the close of business on Thursday, October 1, 2009; and*

***BE IT FURTHER RESOLVED**, that such filing shall include the required schedules, testimony, applications and other items as may be necessary to satisfy the Arizona Corporation Commission rate application standards and to reflect a test year Class A Member revenue requirement increase of \$8,078,436; and*

BE IT FURTHER RESOLVED, that the rate schedules, testimony, applications and other items, including the Class A Member annual revenue requirement increase of \$8,078,436 shall be subject to adjustment based on the resolution of certain wage, salary and retirement expense issues within the test year; and

BE IT FURTHER RESOLVED, that the Board of Directors hereby authorizes the President and Chief Executive Officer, or his designee, to sign or otherwise take any and all necessary actions which may be required to cause the rate application as defined herein to be filed with the ACC on or before the close of business, Thursday, October 1, 2009.

I, Billy L. Adams, do hereby certify that I am Secretary/Treasurer of SWTC, and that the foregoing is a true and correct copy of the Resolution adopted by the Board of Directors at a **regular meeting** held on September 16, 2009.

(seal)

Secretary/Treasurer